

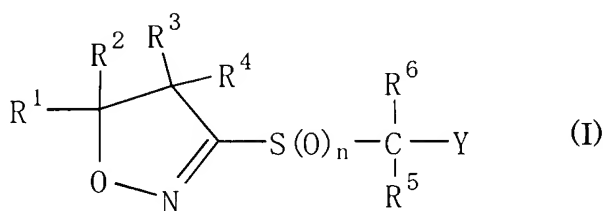
DISCUSSION OF THE AMENDMENT

Claims 1-22 are active in the present application. Claims 2 and 3 are presently withdrawn from active prosecution. Claims 16-22 are amended for matters of form not affecting the scope of the claimed subject matter.

No new matter is added.

### REMARKS

The Office asserts that the presently claimed invention is obvious over a combination of Yoneda (JP-328483; English translation) and Sievernich (U.S. 6,534,444). Applicants traverse the rejection on the grounds that the prior art relied on by the Office, i.e., Yoneda and Sievernich, do not disclose all of the present claim limitations. For example, independent Claim 1 is drawn to an herbicidal composition which contains a compound of formula I shown below:



The groups  $R^1$  and  $R^2$  of the compound of formula I of the present claims is not disclosed or suggested by the prior art relied on by the Office. It appears that the Office may be of the opinion that Yoneda discloses a compound which is encompassed by formula I of present Claim 1. Applicants point out, however, that the  $R^1$  and  $R^2$  groups of the compound of formula I exclude the compound of Yoneda. For example, according to the Office, Yoneda discloses a group that has a 5-membered heterocycle that corresponds with the 5-membered heterocycle of the compound of formula I of Claim 1 except that Yoneda discloses a chloromethyl substituent for one of the  $R^1$  and/or  $R^2$  groups. However,  $R^1$  and  $R^2$  of present Claim 1 are defined such that the chloromethyl group of Yoneda is not encompassed by Claim 1. Specifically  $R^1$  and  $R^2$  may be a C1 to C10 alkyl group. The C1 to C10 alkyl group is defined on page 15, lines 17-24 of the present specification. There is no disclosure in the claims or specification of the present application that the  $R^1$  and/or  $R^2$  group may be a halogenated C1 group and therefore formula I of Claim 1 does not encompass the 5-membered heterocycle material of Yoneda.

Likewise for Sievernich, the compound of formula I of present Claim 1 is not disclosed or suggested by the Sievernich publication.

Applicants submit that the presently claimed invention cannot be obvious over Yoneda and Sievernich in view of the fact that the cited prior art does not disclose or suggest all of the present claim limitations; namely, the compound of formula I of present Claim 1.

Applicants further point out that an alkyl group such as a  $-CH_3$  group is not analogous to a chlorinated derivative such as a  $-CClH_2$  group. Applicants submit that it is readily evident to those of ordinary skill in the art that chlorinating an alkyl group can dramatically affect the physical and chemical properties of the material. A comparison of the properties of methane  $CH_4$  with methyl chloride  $CClH_3$  shows that there is a dramatic difference in physical properties, i.e., boiling point. Applicants further submit that it is readily evident that the toxicological properties of methane and methyl chloride are substantially different. Methane is a naturally occurring relatively harmless material whereas methyl chloride is a reactive material that may have carcinogenic and/or teratogenic properties.

Thus, Applicants submit that it is readily recognized that a chlorinated alkyl group is not a homolog or analog of its parent hydrocarbon.

On page 2 of the Office Action the Office objected to the Declaration on the grounds that "it is not written in English". Applicants submit that the Declaration submitted in the present application on January 19, 2005 is in fact written in both the English and Japanese languages and therefore is acceptable under 37 C.F.R. § 1.66 and 1.68. Applicants request withdrawal of the objection to the Declaration.

The Office further rejected the claims under obviousness-type double patenting over co-pending U.S. Application 11/948,542. The Office states as a reason for the rejection that "the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to the same art recognized subject matter." Applicants

traverse the rejection to the extent that the term “the same art recognized subject matter” is not a component of an obviousness-type double patenting rejection and the rejection is therefore improper.

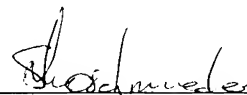
For the reasons discussed above in detail, Applicants submit that all now-pending claims are in condition for allowance. Applicants request withdrawal of the rejection and the allowance of all now-pending claims.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon

Customer Number  
**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 08/07)

---

Stefan U. Koschmieder, Ph.D.  
Registration No. 50,238